

## **complaint**

Mr L complains that Bank of Scotland plc refused to raise a chargeback in relation to a defective car he paid for with a debit card.

## **background**

In May 2017 Mr L bought a car for £5,500. He paid £2,500 with his Bank of Scotland debit card, and the balance was paid by part exchange. Shortly afterwards, in June, he returned the car, citing various faults. The car dealership offered to repair the car and to have it inspected by an independent garage, but Mr L rejected the car and returned it. Compensation was discussed over the course of various emails, but eventually negotiations broke down. So Mr L asked the bank to raise a chargeback for the £2,500 he had paid on his debit card.

Bank of Scotland refused to raise a chargeback, on the ground that it could not succeed. It said that the dealership had offered to pay Mr L £5,664, which exceeded the cost of the car. (The balance was to reimburse Mr L for his costs.) Being dissatisfied with that outcome, Mr L complained to our service in July. He said that his rights under the Consumer Credit Act 2015 had been ignored, and an Act of Parliament could not be overridden by chargeback scheme rules.

Our adjudicator did not uphold this complaint. He said that as the dealership had offered to resolve the dispute, a chargeback would have been unlikely to succeed. The bank was not obliged to raise a chargeback in those circumstances.

Mr L insisted that the dealership's offers had not been genuine and that the dealer had never intended to honour them, so the chargeback should still go ahead. He asked for an ombudsman's decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

Mr L is correct to say that chargeback rules do not override the Consumer Credit Act, but no one has suggested that they do. Rather, the bank is not liable to Mr L under that Act. Chargeback is not a legal right, but a scheme operated by (in this instance) Visa. It does not arise under the Act. It is not the case that Mr L has no rights under the Act, but the bank is not responsible for any contravention of the Act just because Mr L paid for the car with his Bank of Scotland debit card. The Act is only relevant in the dispute between Mr L and the dealer. I see that in some emails to the dealer, Mr L said that he had commenced court proceedings against him. That is not something I can consider.

I agree with the adjudicator and the bank that there is no point in raising a chargeback that is unlikely to succeed. In a case where there is evidence that the dealership has offered a full refund of the price of the car, it is highly likely that the dealer's bank would defend any chargeback. The Bank of Scotland is not obliged to still raise a chargeback anyway.

The evidence I have seen does not lead me to conclude that the offer was not genuine. The dealership made the offer on the condition that Mr L should return the V5 registration document first, since Mr L was still the legal owner of the car. Mr L refused to provide it, and

instead threatened to commence legal action. Shortly afterwards he said he had lodged a claim at court. So the refund was not paid. I do not think that the dealership's request for the V5 was so unreasonable that I can infer that its offer was not genuine, or that a chargeback would have succeeded.

That was in June. It was not until after our adjudicator issued his decision in August, in which he did not uphold this complaint, that Mr L relented on that matter. He told the adjudicator in September that he had sent the V5 to the DVLA and transferred legal ownership of the car back to the dealership. He said that there was now enough evidence for the Bank of Scotland to attempt to do a chargeback. The adjudicator did not agree, because this did not change the fact that the dealership had already offered to resolve the dispute in June. I think that is right. I don't think the bank was wrong to decline to raise a chargeback in June (or since), and I don't think I should require the bank to do so now. Quite apart from the fact that the time limit for raising a chargeback has now expired, the matter is now before a court, and so it would not be fair and reasonable for me to expect the bank to intervene now.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 November 2017.

Richard Wood  
**ombudsman**